



Federal Communications Commission
Washington, D.C. 20554

November 2, 2010

DA 10-2105

Bradlee J. Beer, P.E.
Southwestern Ohio Public Radio
4414 Castle Gate Drive
Beavercreek, OH 45432

Dear Mr. Beer:

On May 27, 2010, you filed on behalf of Southwestern Ohio Public Radio ("Southwestern") an informal petition to deny¹ against an application filed by Johnson Communications, Inc. ("Johnson") to modify the license for Aural Studio Transmitter Link Station WCQ452, located in the Dayton, Ohio area, to change the frequency from 948.125 MHz to 951.000 MHz, change the transmitter site, and make other changes to the facility.² For the reasons set forth below, we deny Southwestern's Informal Objection.

Background. On May 26, 2010, Johnson filed the Modification Application. Johnson was required to coordinate its proposed modification with existing licensees and applicants pursuant to the frequency coordination procedures contained in Section 101.103(d) of the Commission's rules.³ The frequency coordination process consists of giving prior notice to nearby licensees and applicants of the proposed operations, making reasonable efforts to avoid interference and resolve conflicts, and certifying that the proposed operation has been coordinated.⁴ In the Modification Application, Johnson certified that it had completed the requisite frequency coordination process with other nearby licensees.⁵ It attached, however, a May 12, 2010, letter from a frequency coordinator, Terrestrial RF Licensing, Inc., ("TRFL") that acknowledged and provided copies of objections from Southwestern.⁶ Southwestern claims that the proposed modification could cause interference to Southwestern's Aural Studio Transmitter Link Station WQJK228, which operates on an adjacent channel centered at 951.75 MHz.⁷ TRFL stated that it could find no reason to suggest that there might be a potential for interference with Southwestern's station.⁸ On that basis, TRFL concluded that Johnson's proposal complied with the prior coordination requirements of Section 101.103(d) of the Commission's rules and the interference protection criteria in Section 101.105 of the Commission's rules.⁹

¹ Objection to STL, File No. 0004260125 (filed May 27, 2010) ("Informal Objection").

² File No. 0004260125 (filed May 26, 2010) ("Modification Application"). Station WCQ452 is licensed to transmit on a channel centered at 948.125 MHz from 1012 West Third Street, Dayton, Ohio, at 39-43-36.0 north latitude and 084-12-23.4 west longitude.

³ See 47 C.F.R. § 74.502(d).

⁴ See 47 C.F.R. § 101.21(f).

⁵ See Modification Application, Response to Form 601, Schedule I, Question 7.

⁶ See Modification Application, Attachment, PCN Completion Letter.

⁷ See Letter from Bradlee J. Beer to Mr. Steven Slocum, RF Licensing (Apr. 15, 2010).

⁸ See Letter from Steven M. Slocum, Microwave Coordinator, Terrestrial RF Licensing, Inc., to Jim Johnson (May 12, 2010).

⁹ *Id.* The cited rules are codified at 47 C.F.R. §§ 101.103(d) and 101.105.

Bradlee J. Beer, P.E.

On May 27, 2010, Southwestern filed the Informal Objection.¹⁰ Southwestern asserts that Station WQJK228 is experiencing a lack of reliability, with irregular dropouts “seemingly caused by interference.”¹¹ Southwestern stated that it was not accusing Johnson of causing that interference but added that it “feel[s] that their proposed operation with an overlapping of sidebands will exasperate [sic] efforts to improve the reliability” of its digital STL.¹² Southwestern believes that there should be 850 kilohertz separation between the two facilities, and claims that Johnson has not responded to its suggestions to resolve Southwestern’s concerns.¹³

On June 11, 2010, the Wireless Telecommunications Bureau (“Bureau” or “WTB”) returned the Modification Application to provide Johnson with an opportunity to respond to Southwestern’s objection.¹⁴ On August 3, 2010, Johnson responded with a letter from TRFL.¹⁵ TRFL stated that Johnson’s engineer had offered to arrange a test to determine whether or not Johnson’s proposed operations would cause any interference, but that Southwestern had declined to discuss anything other than Johnson changing its frequency.¹⁶ TRFL explained that the 944 to 952 MHz STL band is very crowded in the Dayton area, with 339 licensed paths within the keyhole parameters that are relevant to Johnson’s application.¹⁷ TRFL concluded that 951.000 MHz is the only available frequency that would be workable for Johnson’s purposes in that area.¹⁸ Southwestern responded by asserting that the best approach remained maintaining the 850 kilohertz separation between the two stations and accuses Johnson of a lack of good faith effort to resolve the dispute.¹⁹

On August 30, 2010, representatives of Johnson, Southwestern, and TRFL, participated in a teleconference with Bureau staff. At that meeting, Bureau staff asked Southwestern whether it would provide additional engineering support of its Informal Objection, and it declined to do so. At that meeting, TRFL, which had coordinated Southwestern’s application for Station WQJK228, agreed to provide its thoughts on the problems Southwestern was encountering with the facility. On September 1, 2010, TRFL sent Southwestern a letter, which it copied to the Bureau, reiterating that Southwestern’s transmission difficulties were not attributable to interference and suggesting that the path between Southwestern’s transmitter and receiver might be obstructed by terrain, a problem that could potentially be resolved by elevating its transmitter, its receiver or both.²⁰

At the direction of Bureau staff, Southwestern and Johnson filed status reports on September 8, 2010. Southwestern acknowledged that the transmission difficulties that it was experiencing with its digital STL were caused by “one or more factors – to include interference, possible terrain blockage and low link margin.”²¹ It also questioned the current arrangement under which frequency coordinators limit

¹⁰ Informal Objection.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Notice of Return, Ref. No. 4988062 (Jun. 11, 2010).

¹⁵ Response to Notice of Return, Letter from Steven M. Slocum, Microwave Coordinator, Terrestrial RF Licensing, Inc., to Wireless Telecommunications Bureau (filed Aug. 3, 2010).

¹⁶ *Id.*

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ Response to Notice of Return, Southwestern Ohio Public Radio (filed Aug. 17, 2010).

²⁰ Letter from Steven Slocum, Frequency Coordinator, Terrestrial RF Licensing, to Bradlee J. Beer, Sept. 1, 2010.

²¹ Response to TRFL1Sep10 Letter, Southwestern Ohio Public Radio (filed Sep. 8, 2010) at 1.

their roles to determining whether or not proposed transmissions would cause electrical interference, suggesting that the Commission should require frequency coordinators to expand their missions to include at least cursory checks of link margins and terrain effects.²² Southwestern further stated that it had applied to a local government authority for permission to erect a 70 foot tower at its studio, which could enable it to raise its STL parabolic antenna and potentially improve its link performance.²³ Southwestern also acknowledged that raising its reception antenna might improve performance.²⁴ Southwestern continued to maintain that interference might be the reason why its digital STL link was not performing well.²⁵ For that reason, Southwestern urged that the Bureau hold any authorization of Johnson's application in abeyance until Southwestern completes its efforts to resolve its link performance problems by other means.²⁶ Johnson notes that Southwestern has never submitted any engineering study demonstrating that the proposed modification of Station WCQ452 would cause any interference to Station WQJK228, nor had it provided any technical details to support its claim of interference.²⁷ Johnson further stated that, in the August 30 conference call with Bureau staff, the Southwestern representative had indicated that its objection to Johnson's proposal was based on Southwestern's desire to maintain a range of open frequencies around those licensed to WQJK228 while Southwestern attempted to resolve its technical difficulties.²⁸

Discussion. Section 74.502(d) of the Commission's rules provides that license applications for aural broadcast auxiliary stations, including aural broadcast STL stations, are subject to the interference protection criteria in Sections 101.105(a), (b) and (c) and the frequency coordination procedures of Section 101.103(d) of the Commission's Rules.²⁹ Section 101.103(d) of the Commission's Rules provided in pertinent part:

In engineering a system or modification thereto, the applicant must, by appropriate studies and analyses, select sites, transmitters, antennas and frequencies that will avoid interference in excess of permissible levels to other users. All applicants and licensees must cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum; however, the party being coordinated with is not obligated to suggest changes or re-engineer a proposal in cases involving conflicts. Applicants should make every reasonable effort to avoid blocking the growth of systems as prior coordinated. The applicant must identify in the application all entities with which the technical proposal was coordinated. In the event that technical problems are not resolved, an explanation must be submitted with the application.

Section 101.103(d)(2)(iv) of the Commission's Rules states, "Every reasonable effort should be made by all applicants, permittees and licensees to eliminate all problems and conflicts."³⁰

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 2.

²⁶ *Id.* at 3.

²⁷ Status Report and Update, Johnson Communications, Inc. (filed Sep. 8, 2010)

²⁸ *Id.* at 2.

²⁹ 47 C.F.R. §§ 74.502(d); 101.105(a)-(c), 101.103(d).

³⁰ 47 C.F.R. § 101.103(d)(2)(iv).

Bradlee J. Beer, P.E.

In this case, Johnson and Southwestern have been unable to resolve Southwestern's concerns. We have therefore independently reviewed the record. Based on our review, we conclude that Southwestern has not made a *prima facie* case that the proposed modification of Station WCQ452 would cause or exacerbate any interference problem to Southwestern. Johnson proposes to operate on 951.000 MHz with 300 kilohertz bandwidth.³¹ Accordingly, its authorized bandwidth would be from 950.850 MHz to 951.150 MHz. Station WQJK228 is authorized to operate at 951.750 MHz with an authorized bandwidth of 500 kilohertz (from 951.500 MHz to 952.000 MHz).³² We also note that the facilities use different polarization and are pointed in relatively opposite directions.³³ Furthermore, TRFL calculated that the signal level for WQJK228 at its reception site was -75.1 dBm and that the level of the undesired signal from WCQ452 there was -120.1 dBm. Noting that the two signals were also cross-polarized, TRFL concluded that the resulting difference in signal levels was sufficient to prevent the infringing signal from interfering with reception on an adjacent channel at the victim site.³⁴ In contrast, Southwestern has not provided any engineering to support its claims. Under those circumstances, and based on the record as a whole, we conclude that there is no reasonable likelihood of Johnson's proposed operation causing interference to Station WQJK228.

Having concluded that there is no interference issue, we will promptly deny the Informal Objection and reject Southwestern's request that we continue to hold the Modification Application in abeyance. While we understand that Southwestern has faced difficulties in getting Station WQJK228 to function properly, Johnson's proposal to modify Station WCQ452 is unrelated to those problems. The purpose of the coordination process is to resolve technical problems raised by the proposed operation, not to raise unrelated problems a licensee is experiencing.³⁵

Accordingly, IT IS ORDERED that, pursuant to the authority in Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309 and Sections 1.41, 74.502(d), 101.105(a), (b) and (c) and 101.103(d) of the Commission's Rules, 47 C.F.R. §§ 1.41, 74.502(d), 101.105(a), (b) and (c) and 101.103(d), the Informal Petition to Deny filed by Southwestern Ohio Public Radio on May 27, 2010 IS DENIED.

IT IS FURTHER ORDERED, pursuant to the authority in Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309 and Sections 74.502(d), 101.105(a),

³¹ See Modification Application, Response to Schedule I, Supplement 4, Question 8 (Emission Designator 300KF3E).

³² See Authorization for Station WQJK228 (Emission Designator 500KD7W).

³³ The proposed path azimuth of the transmitter to the receiver for Station WCQ452 is at a bearing of 173.6 degrees. The current licensed path azimuth of the transmitter to the receiver for Station WQJK228 is at a bearing of 340.6 degrees.

³⁴ *Id.*

³⁵ See 47 C.F.R. § 101.103(d). We express no opinion concerning the relationship between TRFL and Southwestern in conjunction with the coordination of Station WQJK228. Southwestern has not alleged that TRFL failed to perform the frequency coordinator duties specified in the Commission's rules. In other respects, the relationship between TRFL and Southwestern would be governed by state contract law. "With regard to the breach of contract issues, the Commission's longstanding policy is that it will defer to courts of competent jurisdiction in the interpretation and enforcement of contractual rights between parties." See *Mid Atlantic Network, Inc., Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture*, 23 FCC Rcd 7582, 7587 (MB AD 2008), citing *Abundant Life, Inc., Memorandum Opinion and Order*, 16 FCC Rcd 4972, 4974 (2001), citing *North American Broadcasting, Inc., Memorandum Opinion and Order*, 15 FCC 2d 979, 983 (Rev. Bd. 1969). We also decline to consider in this context Southwestern's suggestion that the Commission should require frequency coordinators to include at least cursory checks of link margins and terrain effects. See Response to TRFL1Sep10 Letter, Southwestern Ohio Public Radio (filed Sep. 8, 2010) at 1.

Bradlee J. Beer, P.E.

(b) and (c) and 101.103(d) of the Commission's Rules, 47 C.F.R. §§ 74.502(d), 101.105(a), (b) and (c) and 101.103(d), that the licensing staff of the Broadband Division SHALL PROCESS the application to modify the license for Aural Studio Transmitter Link Station WCQ452 filed by Johnson Communications, Inc. on May, 26, 2010, as amended (File No. 0004260125) in accordance with this letter and the Commission's rules and policies.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

Sincerely yours,

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau

cc: Mr. Jim Johnson
President & General Manager
Johnson Communications, Inc.
1012 West Third Street
Dayton, Ohio 45407

Mr. Steven M. Slocum
Microwave Coordinator
Terrestrial RF Licensing, Inc.
2625 South Memorial Drive, Suite A
Tulsa, Oklahoma 74129